WP(C) 882/2004
BEFORE
HON'BLE JUSTICE B.K. SHARMA
JUDGEMENT AND ORDER(ORAL)

1. It is a unique case of its kind in which the respondents took 11 years to implement the order passed by this Court way back in 1996 and that too after forcing the petitioner to come to the doors of the Court once again for redressal of her grievance.

2. The petitioner is an Assistant Teacher of the school called New Guwahati Adarsha High School, Bamunimaidam, Guwahati. She on an earlier occasion had approached this Court by filing a writ petition being C.R. No. 1149/96 making a grievance that she was not paid her due salary. The petitioner was transferred from her earlier school by order dated 30.10.92. Pursuant to such transfer, she had joined the present school and had been rendering her services, but she was not paid her pan and allowances w.e.f. June, 1995. Time to time representations made by the petitioner did not yield any result. Situated thus, the petitioner had to approach this Court by filing the aforesaid writ petition. The writ petition was disposed of with the following directions:

I find that there is no justifiable ground for not paying the salaries of the petitioner despite services rendered by her diligently and honestly in the aforesaid School. Accordingly, I direct the respondents, more particularly respondent No. 4, to pay the salaries to the petitioner within 15 days from the date of receipt of the certified copy of this order.

3. After the aforesaid order passed by this Court, review application being RA No. 64/96 was filed seeking review of the said order. The review application was filed by the Headmaster of the school. Same was dismissed by order dated 09.10.96 with the following direction.

Considering the facts situation, I am of the view that the Respondent No. 1, 2 and 3 shall take immediate steps for issuing the retention order, that is required at all, and insist compliance of the Court's order from the Headmaster within a month from today. The respondent No. 1 and 2 are also directed to make an administrative inquiry as to why due salary of the Government employee was not being paid by the concerned authority. The Commissioner and Secretary to the Govt. of Assam Education Department shall hold further inquiry on this matter fix administrative responsibility on the concerned officials.

4. The petitioner has annexed is of the communications made for payment of salary to her in terms of the aforesaid orders of this Court. Eventually, her arrear salary was paid, but the respondents once again withheld the pay and allowances for the period from 01.06.95 to 31.12.95 which period was also governed by the said orders of this Court.

5. When the petitioner was not paid her pay and allowances for the period from 01.06.95 to 31.12.95, she made further correspondences with the authorities, but to no avail. In paragraph-13 and 17 of the writ petition, the petitioner has made categorical statement that the relevant file seeking view of the judicial department in respect of the payment of salary to the petitioner for the said period was sent to the judicial department. According to the statement made in paragraph-17, the file was pending with the Secretary of Judicial Department sin

ce 20.04.02. It is the case of the petitioner and the Govt. of Assam in the Education Department as per the affidavits filed by them that, in fact, the file was sent to the Judicial Department seeking its view and necessary approval. In this connection, the affidavits filed by the respondents in the Education Department state that the file bearing No. B(3) S. 66/99 was endorsed to the Judicial Department on 20.04.03. On the other hand, as per the affidavits filed by the Govt. of Assam in the Judicial Department no such file was received from the Education Department.

6. In view of the aforesaid contradictory stand on the part of the two different departments of the same Government, this Court recorded its concern in the orders passed on 18.01.07 and 22.01.07. By order dated 22.01.07, as suggested by the learned counsel for the parties, the Addl. Chief Secretary was requested to furnish report in respect of missing file.

7. The Addl. Chief Secretary by his letter dated 5th March, 2007 addressed to Ms. R. Chokraborty, learned Addl. Sr. Govt. Advocate, has expressed his view that in all probability the file was misplaced in the Education Department itself, although their records show that it was endorsed to the judicial department. The report furnished by the Addl. Chief Secretary is based on conjectures and surmises. No definite findings have been recorded. It gives an impression that the Addl. Chief Secretary tried to avoid the responsibility. In one hand he has stated that the records of the Education Department show that the file was endorsed to the judicial department , but on the other hand, he has stated that the file was probably misplaced in the Education Department. Nothing has been indicated as to how a description has been derived by the Addl. Chief Secretary.

8. When the petitioner was not paid her salary for the aforesaid period, she filed the instant writ petition in 2004. There was no response from anyone of the respondents. However, when the matter was taken up by this Court expressing serious concern for non implementation of the orders passed 10 years back, the respondents woke up and started filing affidavits one after another. As regards the payment of salary, the stand of the respondents in the Education Department is that the file was moved for creation of a supernumerary post in the year 1999. There is no explanation as to why there is delay of three years in moving the file for creation of a supernumerary post. There is no explanation as what the department did after 1999.

9. As regards the aforesaid file stated to be missing, contradictory stand has been taken by both the departments, i.e. the Education and Judicial Departments. While it is the stand of the Education Department that the file was endorsed to the Judicial Department, the stand of the Judicial Department is that the file was never received by it.. For this kind of situation, the Addl. Chief Secretary was requested to carry out an enquiry. The outcome of the said enquiry has been recorded above.

10. Learned counsel for the petitioner submits that after the matter was taken by this Court and the respondent No. 3 was directed to file as to why the order of this Court has not been implemented for the last 10 years, she has been paid arrear salary for the aforesaid period. The petitioner has also prayed for interest for the delayed payment. Apart from the fact that there is delay of about 11 years towards implementation of the aforesaid orders of this Court, the petitioner has been deprived of her salary for about 11 years for no fault on her part. In such a situation, I am of the considered opinion that she is entitled to receive interest for delayed payment. Accordingly the respondents are directed to pay interest @ 9% per annum. On the amount with effect from the date, the same was payable to him in terms of the orders of this Court. The amount in respect of interest shall be paid to the petitioner positively on or before 31.06.07.

11. The matter does not come to an end in providing relief to the petitioner

. One aspect of the matter is that as to how the file in which the proposal was mooted for creation of supernumerary post could be missing. As per the stand of the Education Department, the file was endorsed to the Judicial Department. Mr. T. Islam, learned S.C., Education Department has produced the relevant records (Register Index) to show that the file was sent to the Judicial Department. On the other hand, it is the stand of the Judicial Department that the Index Register does not show the receipt of the file by the Judicial Department. However, the question remains that although the definite stand was taken by the petitioner that the file was lying with the Judicial Department, but the Judicial Department did not controvert the same by filing any affidavit. It is only when the Court expressed its concern, the Judicial Department filed its affidavit denying that the file was endorsed to it by the Education Department.

12. In view of the above, I issue direction to the Chief Minister's Vigilance Cell to make a proper enquiry as to how the file bearing No. B(3) S.66/99 could be missing which led to sufferings to the petitioner. The Chief Minister's Vigilance Cell upon enquiry shall fix the responsibility on the erring officials. The enquiry shall be carried out and completed as expeditiously as possible, but not later than three months w.e.f. 01.06.07. It is further provided that interest to be paid to the petitioner be realized from the erring officials.

13. With the above directions, the writ petition is disposed of with a cost of Rs. 10,000/- to be borne by both the departments, i.e. the Education Department and the Judicial Department. The Registry shall realize the same from the Heads of the Departments and pay the same to the petitioner as expeditiously as possible.

14. Copies of this order shall be furnished to Ms. R. Chokraborty, learned State Counsel and Mr. T. Islam, learned S.C., Education Department for their follow up action.